

EXHIBIT 22

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CASE NO. 2:14-CV-05060 (JMV-JVC)

BOROUGH OF EDGEWATER,
Plaintiff(s),

vs.

WATERSIDE CONSTRUCTION, LLC; 38 COAH,
LLC; DAIBES BROTHERS, INC; NORTH RIVER
MEWS ASSOCIATES, LLC; FRED A. DAIBES;
TERMS ENVIRONMENTAL SERVICES, INC;
ALCOA, INC., et al.,

Defendant(s).

-and-

WATERSIDE CONSTRUCTION, LLC; 38 COAH,
LLC; DAIBES BROTHERS, INC.; NORTH RIVER
MEWS ASSOCIATES, LLC; and FRED A. DAIBES,
Defendant(s)/Third-Party Plaintiff(s),

vs.

NEGLIA ENGINEERING ASSOCIATES,
Third-Party Defendant(s),

-and-

ALCOA DOMESTIC, LLC, as successor in interest
to AP NEW JERSEY, INC.,
Defendant(s)/Third-Party Plaintiff(s),

vs.

COUNTY OF BERGEN and RIVER ROAD IMPROVEMENT
PHASE II, INC.,
Third-Party Defendant(s).

DEPOSITION UNDER ORAL EXAMINATION OF

FRED DAIBES

VOLUME I

DATE: July 14, 2017

REPORTED BY: MICHAEL FRIEDMAN, CCR

ESQUIRE DEPOSITION SOLUTIONS, LLC
1384 Broadway - 19th Floor
New York, New York 10018
(212) 687-2010

JOB # J0 613377

1 and aggregate. They're both used as a final
2 course before.

3 Q Do you have knowledge of purchasing
4 recycled concrete aggregate from --

5 A Yes.

6 Q Okay. And from whom?

7 A From Sanzari's recycling plant in
8 North Bergen.

9 Q And do you have receipts for that?

10 A It was done by the asphalt
11 contractor. I -- yes, we can get the
12 receipts.

13 Q Who is the asphalt contractor?

14 A Sinisi.

15 Q In terms of the -- strike that.

16 Waterside contends that it sought
17 permission from Terms to utilize the Alcoa
18 material.

19 Correct?

20 A Yes, sir.

21 Q Other than that material, did
22 Waterside seek permission from Terms to
23 utilize any other RCA? Not what Sinisi did,
24 what Waterside did?

25 A No.

1 coincided with the time that this litigation
2 was filed?

3 MR. SHAFRON: Objection to form.

4 A It was the time the litigation --
5 that would have been a silly item. We didn't
6 do it on purpose and it wouldn't -- actually
7 hurts us, doesn't help us.

8 Q Why does it hurt you?

9 A Because -- and now it's owned by
10 North River Mews, which is the party to the
11 agreement versus if it was owned by 38 COAH
12 which is not a party to the agreement.

13 Q Well, and what agreement are you
14 referring to?

15 A The agreement that you're going to
16 say is indemnifying Alcoa.

17 Q And which agreement is that?

18 A Your indemnity agreement that
19 you --

20 Q Well, there are a couple of
21 indemnity agreements, so which one are you
22 referring to?

23 A All of them are based on North
24 River Mews.

25 Q Okay.

1 A So if anything, we did you a favor.

2 Q With respect to Building 12, I
3 think you had testified that Alcoa came in at
4 some point and removed contaminated materials
5 from Building 12.

6 Is that correct?

7 A Yes.

8 Q When was that?

9 A No, I did not say they removed. I
10 said they marked out where the contaminated
11 material was to be removed during the
12 demolition of the big building, same time.

13 Q And who from Alcoa did that?

14 A Whoever their environmental
15 consultants were.

16 Q Do you have a record of that being
17 done?

18 A Only pictures of spray paint on the
19 floor.

20 Q But you have a record of Alcoa
21 marking out materials --

22 MR. SHAFRON: Objection to form.

23 Q -- specifically?

24 A No.

25 Q And do you have an understanding

1 Field, who from Waterside would tell them
2 where to pick up material from?

3 A I don't know. Only Terms had the
4 ability. We couldn't bring anything onto the
5 field.

6 Terms would go and test the
7 material, wherever it was coming from.

8 Q Is it your testimony that Terms
9 gave instruction to your truckers where to
10 pick up fill material?

11 A Yes, sir. Absolutely.

12 Q Did anyone at Waterside instruct
13 Waterside personnel to load materials onto a
14 truck and transport it to Veteran's Field?

15 A Nope.

16 Q Subsequent to the award of the bid
17 for the Veteran's Field project to Waterside,
18 did you have any discussions with anyone at
19 Waterside about finding a source of fill
20 material for Veteran's Field project?

21 A No, I did not.

22 Q Did anyone from Edgewater Borough
23 give Waterside permission or authority to use
24 material other than certified quarry stone or
25 virgin rock as fill in the Veteran's Field

1 project?

2 I'm not talking about Terms. I'm
3 talking about someone from the Borough of
4 Edgewater?

5 MR. SHAFRON: Objection to form.

6 A No, sir.

7 Q Do you recall attending a meeting
8 at the beginning of the Veteran's Field
9 project with Ronald Dooney and Noah Skyta,
10 S-K-Y-T-A, from Terms?

11 A Before the project started?

12 Q At the beginning of the project.

13 A Yes.

14 Q Okay. Was anyone else present?

15 A I don't recall.

16 Q Do you recall if Mike Berliner was
17 there?

18 A Could have been. I don't remember.

19 Q Do you remember if Steve Readington
20 was there?

21 A Could have been.

22 Q Do you remember if Andrew Robinson
23 was there?

24 A Yeah, same answer, could have been.
25 I don't remember.

1 Q What was discussed at that meeting?

2 A I thought it was to lay out the
3 procedure on how fill would get approved.

4 Q And what was that procedure?

5 A We would tell them where it was
6 coming from, they would go test it, and then
7 they would give us a yea or nay.

8 Q Was there any discussion about the
9 bid specifications?

10 A I don't know.

11 Q Was there any discussion about
12 whether material could be brought to
13 Veteran's Field before the testing was
14 completed?

15 A Yes.

16 Q And what was that discussion?

17 A Absolutely not.

18 Q Material could not be brought to
19 Veteran's Field before testing was done?

20 A Before it was tested and before it
21 was approved. They made that very clear to
22 us.

23 They wouldn't allow us to get
24 topsoil from where the town brought their
25 topsoil. They wouldn't approve that.

1 Q Do you know why?

2 A They said it had pesticides with --
3 high pesticide levels in it. And that was
4 where the town was buying their -- the
5 topsoil from.

6 Q At that meeting, did you discuss
7 where you were proposing to obtain fill
8 material for the Veteran's Field project?

9 A Yes.

10 Q And where was that?

11 A There was a job that we were --
12 virgin soil job in North Bergen, a property
13 that we had just purchased, that had to be --
14 the dirt had to be taken off of it. And they
15 rejected it because they said the lead level
16 was too high and -- it was virgin property
17 that was never used.

18 And then Ron explained to me that
19 even if the property was never used, you can
20 have high lead levels, because in the old
21 days they used to have leaded gasoline and
22 the gasoline would go into the air, and he
23 wouldn't accept it.

24 Q Did you have any discussion about
25 using rock from an undisturbed geological

1 formation?

2 A Yes, we did.

3 Q And what was that discussion?

4 A Yes, you could use rock.

5 Q Was any testing required for that
6 rock?

7 A Not for rock.

8 Q Did Mr. Dooney explain why the
9 topsoil couldn't be used, other than the fact
10 that it contained pesticides?

11 A That was it. It didn't pass -- the
12 pesticide level in the topsoil was higher
13 than DEP. You know, we got into a whole
14 thing over it.

15 I said, "How could it be? This is
16 the company that just sells topsoil." But he
17 wouldn't accept it.

18 Q Was there any discussion at that
19 meeting about a beneficial reuse permit?

20 A Yes.

21 Q And what was that discussion?

22 A That if we got the town to go for a
23 beneficial reuse permit, then we'd be able to
24 use different -- but he -- the town, he felt
25 the town wouldn't go for it.

1 Q When you say -- by "different," you
2 mean materials with contaminants?

3 A Not material with contaminants,
4 material with contaminants that were lower
5 than the contaminants that were on the field.
6 I think he -- the way he explained it was, as
7 long as it was less than what was already
8 existing on the field, then you could use it
9 as long as it was two feet below the top
10 layer.

11 Q And how did that come up?

12 A When we were talking about the fill
13 at the land that we owned down the street.

14 Q Okay. You mentioned -- is that the
15 North Bergen site that you mentioned
16 previously?

17 A Yes, sir.

18 Q What was the address of that site
19 --

20 A Oh, God --

21 Q -- or the name? Does it have a
22 name?

23 A Right now, it's across the street
24 from Palisades General Hospital. We built an
25 apartment building on it.

1 MR. SHAFRON: I think it's been
2 about an hour and forty-five. Let's go
3 off the record. Do you -- let's take
4 five, five minutes.

5 (Brief recess taken.)

6 Q Okay. Ready to continue?

7 A Yes, sir.

8 Q Mr. Daibes, did there come a time
9 during the Veteran's Field project when you
10 became involved in the discussion at
11 Veteran's Field with Noah Skyta about fill
12 material being brought to Veteran's Field?

13 A I don't recall.

14 Q Did you ever complain to anyone
15 about Mr. Skyta's involvement with the
16 Veteran's Field project?

17 A May have.

18 Q To whom?

19 A To Dooney.

20 Q To anyone else?

21 A No.

22 Q And what did you complain about?

23 A That he was not working with us,

24 basically. Like I said, we had a couple jobs
25 locally where they were doing virgin soil,

1 and we couldn't get him to approve any of
2 these jobs, any of these sites for the soil.

3 Q Do you recall when that was?

4 A Towards -- in the beginning of the
5 job.

6 Q Did you ever request that Mr. Skyta
7 be removed from the Veteran's Field project?

8 A I didn't request that he be
9 removed, but I said I wasn't happy with him.
10 He was difficult to work with.

11 Q And that was what you said to
12 Mr. Dooney?

13 A Yes, sir.

14 Q Do you recall attending a meeting
15 with Mr. Dooney, Matt Vereb, Mike Berliner
16 and Greg Franz, F-R-A-N-Z, regarding
17 Mr. Skyta?

18 A I do not.

19 Q Does Waterside have a construction
20 yard?

21 A Yes, it does.

22 Q And where is that located?

23 A In Edgewater.

24 Q What's the address?

25 A I don't know the exact address, but

1 it would be a mile south of the ball field.

2 Q Is that 440 River Road?

3 A Could be.

4 Q Do you recall a meeting at the
5 beginning of the Veteran's Field project at
6 Waterside Construction's yard with Mr. Dooney
7 and Mr. Skyta?

8 A No.

9 Q Did you ever complain to anyone
10 that Terms was holding up or obstructing the
11 completion of the Veteran's Field project?

12 A I may have.

13 Q To whom?

14 A I don't know.

15 Q Was it just within the Waterside
16 personnel or outside?

17 A It may have been to Greg Franz or
18 to Neglia's people.

19 Q But you're not sure?

20 A I'm not -- I remember being
21 frustrated with them not approving any of the
22 fill that -- you know, every time we would
23 bring a site to them, it was -- we couldn't
24 get it approved.

25 Q Do you remember expressing that

1 frustration specifically to Greg Franz?

2 A Yes, probably.

3 Q I don't need a guess, Mr. Daibes.

4 I need to know whether you recall it or --

5 A I do not recall it.

6 Q Do you recall expressing that

7 frustration to anyone from Neglia?

8 A Yes. I mean, do I recall exactly
9 when? No.

10 But I'm sure I did.

11 Q Okay. Do you recall to whom at
12 Neglia you expressed that?

13 A Probably Mike Berliner.

14 Q And what did you tell Mr. Berliner?

15 A That Dooney is being difficult,
16 because we had a couple of small jobs, again,
17 virgin soil jobs, a couple blocks away from
18 the site that we had asked him to go and see
19 if we can accept that soil.

20 Q Did you talk to Mr. Berliner in
21 person or over the telephone?

22 A In person.

23 Q Was anyone else present?

24 A I don't recall.

25 Q And what jobs, specifically, were

1 you frustrated about?

2 A It was the Zimick, Z-I-M-I-C-K,
3 Brothers. They were doing a couple of
4 two-family houses, literally at the top of
5 the hill from the ball field, and they had a
6 -- you know, again, virgin soil.

7 Q Did those projects have a name?

8 A They were just building three
9 two-family houses.

10 Q Location under Cliff Avenue?

11 A Under Cliff Avenue.

12 Q How did you become aware that Terms
13 was not approving those?

14 A Because we would go to him, and he
15 would go up and test the soil, and come back
16 and say no.

17 Q When you say "we," who would go to
18 him?

19 A Somebody from my organization; Matt
20 Vereb, Ken Shiller, whoever.

21 Q And they reported back to you that
22 Terms did not approve that?

23 A Correct.

24 Q When did North River Mews enter
25 into a ground lease agreement for the

1 first e-mail on the first line, which is an
2 e-mail from Matt Vereb at 9:04 a.m. back to
3 Mr. Ferguson and yourself, it states, "Terms
4 did perform additional samples after the hot
5 spots were removed."

6 Do you see that?

7 A Yes.

8 Q Do you have any reason to doubt
9 Mr. Vereb's statement?

10 A No, I do not. But that
11 conversation was based more on how did Terms
12 decide where the hot spots were. Ferguson
13 took a position that that field was not
14 tested properly.

15 The proper grid was not done when
16 he did the original.

17 Q Can you clarify what you mean by
18 that?

19 A Ferguson took a position that he
20 got the samples that Terms had done of the
21 field, and it was like maybe 16, 17 different
22 spots that he took samples, and Terms -- and
23 Ferguson believed that there should have been
24 a hundred to 150 samples done, based on a
25 certain type of a grid.